

FCC MAIL SECTION

Federal Communications Commission

DA 99-1169

JUN 22 10 19 AM '99

DISPATCHED BY  
Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 99-218 ✓
Table of Allotments,	)	RM-9637
FM Broadcast Stations.	)	
(Alberton, Montana)	)	
	)	
(Choteau, Montana)	)	MM Docket No. 99-219
	)	RM-9638
	)	
(Darby, Montana or	)	MM Docket No. 99-220
Stevensville, Montana)	)	RM-9601
	)	RM-9636
	)	
(Fortine, Montana)	)	MM Docket No. 99-221
	)	RM-9639
	)	
(Fountain Green, Utah)	)	MM Docket No. 99-222
	)	RM-9602
	)	
(Leeds, Utah)	)	MM Docket No. 99-223
	)	RM-9604
	)	
(Parowan, Utah)	)	MM Docket No. 99-224
	)	RM-9605
	)	
(Saint Regis, Montana)	)	MM Docket No. 99-225
	)	RM-9635
	)	
(Toquerville, Utah)	)	MM Docket No. 99-226
	)	RM-9603
	)	
(Trego, Montana)	)	MM Docket No. 99-227
	)	RM-9634
	)	
(Valier, Montana)	)	MM Docket No. 99-228
	)	RM-9612

## NOTICE OF PROPOSED RULE MAKING

Adopted: June 9, 1999

Released: June 18, 1999

Comment Date: August 8, 1999

Reply Date: August 24, 1999

By the Chief, Allocations Branch

1. Before the Commission for consideration is a multiple docket Notice of Proposed Rule Making setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each petitioner has stated that it will apply for its requested channel, if allotted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket Notice of Proposed Rule making issued in response to a Commission Public Notice released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single Notice of Proposed Rule Making. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the Public Notice, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

**A. MM Docket No. 99-218, RM-9637****Petitioner:** The Battani Group

c/o: Robert Lewis Thompson  
Taylor Thiemann & Aitken, L.C.  
908 King Street, Suite 300  
Alexandria, Virginia 22314

**Proposal:** Allot Channel 288C2 to Alberton, Montana, as the community's first local FM service.

Community	Present	Proposed
Alberton, Montana	-----	288C2

**Coordinates:** 47-01-45 NL and 114-45-20 WL

**Additional Information:** Channel 288C2 can be allotted to Alberton with a site restriction 21.7 kilometers (13.5 miles) west of the community. Since Alberton is located within 320 kilometers

(200 miles) of the U.S.-Canadian border, concurrence of the Canadian Government will be requested for this allotment. Albertain is an incorporated community located in Mineral County. The community has its own post office and zip code (59820) and has a population of 354 people according to the 1990 U.S. Census. Parties filing comments are requested to present the Commission with specific information to demonstrate that Albertain has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991) and cases cited therein. Failure to provide the requested information will result in a denial of the proposal.

**B. MM Docket No. 99-219, RM-9638**

**Petitioner:** The Battani Corporation

c/o Robert Lewis Thompson  
Taylor Thiemann & Aitken, L.C.  
908 King Street, Suite 300  
Alexandria, Virginia 22314

**Proposal:** Allot Channel 271C1 to Choteau, Montana, as the community's first local FM broadcast service.

Communitiy	Present	Proposed
Choteau, Montana	-----	271C1

**Coordinates:** 47-33-40 NL and 112-18-43 WL

**Additional Information:** Channel 271C1 can be allotted to Choteau with a site restriction 29.4 kilometers (18.3 miles) south of the community. Since Choteau is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian Government will be requested for this allotment. Choteau is an incorporated community located in Teton County. Choteau is the County Seat for Teton County, has its own post office and zip code (59422) and the 1990 U.S. Census credits the community with a population of 1,741 people.

**C. MM Docket No. 99-220, RM-9601 and RM-9636**

In this proposal, the Commission considers two separately-filed petitions for rule making that are mutually exclusive. We shall provide each proponent an opportunity to demonstrate in comments why its community should be preferred. In this regard, the parties should be guided by the allotment criteria set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

**Petitioners:** Mountain West Broadcasting  
c/o Victor A. Michael, President  
Mountain West Broadcasting  
6807 Foxglove Drive  
Cheyenne, Wyoming 82009

Battani Corporation  
c/o Robert Lewis Thompson  
Taylor Thiemann & Aitken, L.C.  
908 King Street, Suite 300  
Alexandria, Virginia 22314

**Proposal:** Allot Channel 300A at Darby, Montana (RM-9601), as the community's first commercial FM transmission service in response to the petition filed by Mountain West Broadcasting or allot Channel 300C2 at Stevensville, Montana (RM-9636), as the second FM service in the community in response to a petition filed by the Battani Corporation.

Community	Present	Proposed
Darby, Montana	-----	300A
<b>OR</b>		
Stevensville, Montana	283A	283A, 300C2

**Coordinates:** 46-01-18 NL and 114-10-42 WL for Channel 300A at Darby

46-30-24 NL and 114-05-18 WL for Channel 300C2 at Stevensville

**Additional Information:** Channel 300A can be allotted to Darby without a site restriction. Darby is an incorporated community located in Ravalli County. The community has its own post office and zip code (59829) and has a population of 625 people according to the 1990 U.S. Census.

Channel 300C2 can be allotted to Stevensville, Montana, without a site restriction. Stevensville has its own post office and zip code (59870) and is located in Ravalli County. The 1990 U. S. Census lists the population for Stevensville as 1,221 people. Since Stevensville is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for the allotment at Stevensville.

**FCC Contact:** Kathleen Scheuerle, (202) 418-2180

**D. MM Docket No. 99-221, RM-9639**

**Petitioner:** The Battani Corporation  
c/o Robert Lewis Thompson  
Taylor Thiemann & Aitken, L.C.  
908 King Street, Suite 300  
Alexandria, Virginia 22314

**Proposal:** Allot Channel 232C3 to Fortine, Montana, as the community's first local service.

Community	Present	Proposed
Fortine, Montana	-----	232C3

**Coordinates:** 48-45-42 NL and 114-54-12 WL

**Additional Information:** Channel 232C3 can be allotted to Fontine, Mortana, without a site restriction. Since Fortine is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian Government will be requested for the allotment of Channel 232C3 at Fontaine. Additionally, we find that Fortine has its own post office and zip code (59918) and is located in Lincoln County. The 1998 edition of the Rand McNally Commercial Atlas and Marketng Guide indicates that Fortine has a population of 130 people. Parties filing comments are requested to present the Commission with specific information to demonstrate that Fortine has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991) and cases cited therein. Failure to provide the requested information will result in a denial of the proposal.

**FCC Contact:** Kathleen Scheuerle, (202) 418-2180

**E. MM Docket No. 99-222, RM-9602**

**Petitioner:** Mountain West Broadcasting

c/o Victor A. Michael, President  
Mountain West Broadcasting  
6807 Foxglove Drive  
Cheyenne, Wyoming 82009

**Proposal:** Allot Channel 244A at Fountain Green, Utah, as the community's first local FM broadcast service.

Community	Present	Proposed
Fountain Green, Utah	-----	244A

**Coordinates:** 39-37-42 NL and 111-38-24 WL

**Additional Information:** Channel 244A can be allotted to Fountain Green without a site restriction. Fountain Green is an incorporated community located in Sanpete County. Fountain Green has ist own post office and zip code (84632) and has a population of 578 people according

to the 1990 U.S. Census.

**FCC Contact:** Kathleen Scheuerle, (202) 418-2180

**F. MM Docket No. 99-223, RM-9604**

**Petitioner:** Mountain West Broadcasting

c/o Victor A. Michael, President  
Mountain West Broadcasting  
6807 Foxglove Drive  
Cheyenne, Wyoming 82009

**Proposal:** Allot Channel 287C2 at Leeds, Utah, as the community's first local FM broadcast service.

Community	Present	Proposed
Leeds, Utah	-----	287C2

**Coordinates:** 37-14-18 NL and 113-21-42 WL

**Additional Information:** Channel 287C2 can be allotted to Leeds without a site restriction. The community of Leeds is an incorporated community located in Washington County with a population of 254 people according to the 1990 U.S. Census. Leeds has its own post office and zip code (84746). Parties filing comments are requested to present the Commission with specific information to demonstrate that Leeds has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991) and cases cited therein. Failure to provide the requested information will result in a denial of the proposal.

**FCC Contact:** Kathleen Scheuerle, (202) 418-2180

**G. MM Docket No. 99-224; RM-9605**

**Petitioner:** Mountain West Broadcasting

c/o Victor A. Michael, President,  
Mountain West Broadcasting  
6807 Foxglove Drive  
Cheyenne, Wyoming 82209

**Proposal:** Allot Channel 300C2 at Parowan, Utah, as that community's first local broadcast service.

Community	Present	Proposed
Parowan, Utah	-----	300C2

**Coordinates:** 37-50-30 NL and 112-49-30 WL

**Additional Information:** Channel 300C2 can be allotted to Parowan without a site restriction. Parowan is incorporated and the county seat of Iron County. Parowan has its own post office and zip code (84761) and has a population of 1,873 people according to the 1990 Census.

**FCC Contact:** Kathleen Scheuerle, (202) 418-2180

**H. MM Docket No. 99-225; RM-9635**

**Petitioner:** The Battani Corporation

c/o Robert Lewis Thompson  
Taylor Thiemann & Aitken, L.C.  
908 King Street, Suite 300  
Alexandria, Virginia 22314

**Proposal:** Allot Channel 256C2 to Saint Regis, Montana, as the community's first local FM broadcast service.

Community	Present	Proposed
Saint Regis, Montana	-----	256C2

**Coordinates:** 47-15-56 NL and 114-51-29 WL

**Additional Information:** Channel 256C2 can be allotted to Saint Regis with a site restriction 18.1 kilometers east of the community. Since Saint Regis is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian Government will be requested for this allotment. Additionally, we find that Saint Regis is located in Mineral County. According to the 1998 edition of the Rand McNally Commercial Atlas, Saint Regis has its own post office and zip code (59866) and a population of 650 people. Parties filing comments are requested to present the Commission with specific information to demonstrate that Saint Regis has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991) and cases cited therein. Failure to provide the requested information will result in a denial of the proposal.

**FCC Contact:** Kathleen Scheuerle, (202) 418-2180

**I. MM Docket No. 99-226; RM-9603**

**Petitioner:** Mountain West Broadcasting

c/o Victor A. Michael, President,  
Mountain West Broadcasting  
6807 Foxglove Drive  
Cheyenne, Wyoming 82009

**Proposal:** Allot Channel 280C to Toquerville, Utah, as the community's first local aural transmission service.

<b>Community</b>	<b>Present</b>	<b>Proposed</b>
Toquerville, Utah	-----	280C

**Coordinates:** 37-15-12 NL and 113-17-00 WL

**Additional Information:** Channel 280C can be allotted to Toquerville without a site restriction. Toquerville is an incorporated community located in Washington County. The community has its own post office and zip code (84774) and has a population of 488 people according to the 1990 U.S. Census.

**FCC Contact:** Kathleen Scheuerle, (202) 418-2180

**J. MM Docket No. 99-227, RM-9634**

**Petitioner:** The Battani Corporation

c/o Robert Lewis Thompson  
Taylor Thiemann & Aitken, L.C.  
908 King Street, Suite 300  
Alexandria, Virginia 22314

**Proposal:** Allot Channel 296C2 at Trego, Montana, as the community's first local broadcast service.

<b>Community</b>	<b>Present</b>	<b>Proposed</b>
Trego, Montana	-----	296C2



**Coordinates:** 48-38-44 NL and 114-57-17 WL

**Additional Information:** Channel 296C2 can be allotted to Trego in compliance with the Commission's spacing requirements with a site restriction 9.1 kilometers (5.7 miles) southwest of the community. Since Trego is located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian Government will be requested for this allotment. Additionally, we find that the 1998 edition of the Rand McNally Commercial Atlas has a listing for Trego in Lincoln County with a population of 10 people, a post office and zip code (59934). Parties filing comments are requested to present the Commission with specific information to demonstrate that Trego has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991) and cases cited therein. Failure to provide the requested information will result in a denial of the proposal.

**FCC Contact:** Kathleen Scheuerle, (202) 418-2180

**K. MM Docket No. 99-228, RM-9612**

**Petitioner:** The Battani Corporation

c/o Robert Lewis Thompson  
Taylor Thiemann & Aitken, L.C.  
908 King Street, Suite 300  
Alexandria, Virginia 22314

**Proposal:** Allot Channel 289C1 to Valier, Montana, as the community's first local broadcast service.

Community	Present	Proposed
Valier, Montana	-----	289C1

**Coordinates:** 48-18-18 NL and 112-15-30 WL

**Additional Information:** Channel 289C1 can be allotted to Valier, Montana, without a site restriction in compliance with the Commission's spacing requirements. Since Valier is located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian Government will be requested for this allotment. Valier is an incorporated community located in Pondera County. Valier has a post office and zip code (59486) and the 1990 U.S. Census credits the community with a population of 519 people.

**FCC Contact:** Kathleen Scheuerle, (202) 418-2180.

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference **only** the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.
4. Interested parties may file comments on or before August 9, 1999, and reply comments on or before August 24, 1999, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.
5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.
6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

## FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, 445 Twelfth Street, S. W.; TW-A325, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its Headquarters, 445 Twelfth Street, SW, Washington, D. C.